S.B.Civil Writ Petition NO.2231/1998

Bal Singh & Ors.

vs

State of Rajasthan & Ors.

DATE OF ORDER : - 25.1.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. R.S.Gill, for the petitioners.
Mr. HHS Kharlia]
Mr. Ashwini Swami], for the respondents.

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Heard learned counsel for the parties.

The petitioners by this writ petition have challenged the judgments and decrees passed by three courts below against the petitioners. The trial court decreed the suit of the plaintiff Hari Singh (now deceased) on 11th June, 1985 for possession of the agricultural land of Khasra nos.496/41, 497/10 and 279/50 holding that the original plaintiff Hari Singh was the Khatedar tenant of the land in dispute and the defendants were given land for cultivation for a short period and, therefore, the defendants have no right, title or interest in the property. The trial court rejected the plea of the defendants that they were in cultivatory possession since before Samwat year 2012. The trial

court also held that the suit is within limitation.

The defendants Bala Singh, Amar Singh and Partap Singh preferred appeal against the judgment and decree of the trial court dated 11th June, 1985. The first appellate court (the revenue appellate authority), Sri Ganganagar dismissed the appeal vide judgment and decree dated 25th April, 1992 upholding all the findings of the trial court.

Being aggrieved against the judgment and decree of the appellate court dated 28th April, 1992, the defendants preferred second appeal before the Board of Revenue, that too, was dismissed by the Board of Revenue on 9th March, 1998. Copies of all the impugned judgments and decrees are placed on record by the petitioners.

According to learned counsel for the petitioner, the plaintiff went in adoption and, therefore, he lost his all rights, which he was claiming as a son of Jassu Singh. It is also submitted that the plaintiff left the village long ago and defendants occupied the land. In fact,the defendants were in possession of the land since before Samwat Year 2012 and, therefore, they became the Khatedar tenant of the land in dispute. Learned counsel for the petitioner further submits that the plaintiff came with a case that he was cultivating the land himself

whereas the documents proves that the plaintiff did not cultivate the land in question. It is also submitted that even the land in dispute was allotted to the petitioner for temporary cultivation by the State, which is proved from the Annex.8 placed on record in this writ petition. The petitioner also submitted certain receipts showing the payment of the rent by the petitioners-defendants. Learned counsel for the petitioner also tried to submit that if the land in dispute is to be counted in the account of the plaintiff then the land will go in ceiling.

I considered the submissions of learned counsel for the petitioner and perused the records also, which were summoned from the courts below.

It is clear from the facts that the plaintiff filed the suit for possession alleging that plaintiff became the Khatedar tenant in the land in dispute. He alleged that he has personally cultivated the land in dispute and some time here and there he gave the land for cultivation on share basis to the defendants. Lastly he gave the land to the defendants in the Samwat Year 2029-30 for one year. Thereafter, the plaintiff gave the land to the defendants for cultivation in the preceding year and when the defendants did not return the possession of the land, the plaintiff filed the suit for possession.

In reply, the defendants submitted that the plaintiff went into adoption and left the village. The defendants also pleaded that defendants are in cultiavtory possession before the Samwat year 2012. All the three courts below after considering the documentary as well as oral evidence held that the plaintiff proved his Khatedari rights for the land in question. The courts below relied upon the copies of the Jamabandies evidencing the Khatedari rights of the plaintiff. Against this, the defendants could not produce any documentary evidence to prove his possession over the land in dispute in Samwat year 2012, prior or after, upto the Samwat Year when their names were recorded by the revenue authorities in the Samwat year 2018. The defendants failed to prove any valid order on the basis of which the entires as recorded prior to the petitioners' name could have been changed by the revenue authorities. It is settled law that the entires in revenue record can be challenged only on the basis of an order lawfully passed. A mere change in revenue entires neither creates any right nor create any title in the property. Apart from it, there is no material evidence to prove that the entries recorded in the revenue record for the Samwat Year 2018 were wrong.

In view of the above, the finding of fact recorded by the three courts below that the plaintiff is the Khatedar tenant of the land in question suffers from no error of law or even of fact. The petitioners

plea is that the plaintiff went in adoption to Moti Singh. For this plea, there is no cogent evidence on record. However, the fact of plaintiff's going in adoption to Moti Singh is an admitted fact of the plaintiff himself and how this fact effects the title of the plaintiff's property has not been made clear by the defendants. If the plaintiff had a right in the property prior to adoption then after adoption he cannot cease to be the owner of the property. Learned counsel for the petitioner submits that the land in question will be in excess of the ceiling limit and, therefore, the plaintiff cannot have the land, is without any foundation. Not only this, but the arguments advanced by learned counsel for the petitioner cannot be entertained in a suit for possession against the trespasser.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-